

**FLATHEAD COUNTY PLANNING BOARD  
MINUTES OF THE MEETING  
FEBRUARY 15, 2012**

**CALL TO ORDER** A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Greg Stevens, Charles Lapp, Gene Shellerud, Jim Heim, Jeff Larsen, Ron Schlegel, and Frank DeKort. Robert Faulkner had an excused absence. Allison Mouch and BJ Grieve represented the Flathead County Planning & Zoning Office.

There were 9 people in the audience.

**APPROVAL OF MINUTES** Heim made a motion seconded by Lapp to approve the January 11, 2012 meeting minutes.

On a roll call vote the motion passed unanimously.

**PUBLIC COMMENT**  
*(not related to agenda items)*

None.

**DRAFT  
FLATHEAD  
COUNTY  
GROWTH  
POLICY**

The Board will review and take public comment, pursuant to 76-1-602 M.C.A., on the complete draft of the Flathead County Growth Policy Update.

**STAFF REPORT**

Allison Mouch summarized the process regarding the growth policy update, gave a brief history and timeline of that process and discussed public comment that had been received to date. She informed the board that the public process was the most important part of the update and stated that holding additional workshop(s) would be important to that process. She also stated after holding more workshops they would again hold another public hearing to review formally any changes that might be made to the document.

**BOARD  
QUESTIONS**

None.

**AGENCY  
COMMENTS  
PUBLIC  
COMMENT**

None.

Steve Rosso, 18988 Medicine Rock Lane, represented the Flathead Lakers. He wanted to point out that they specifically support goals 35-40 and the policies in Chapter 8. He felt the chapter introduction and narrative did a good job in proving the case for making the protection of water resources a very high

priority. He stated some of the policies used words such as 'encourage' and 'support', but he felt the wording could be stronger using words such as 'shall encourage', 'should encourage' or 'require'. He also thought words such as 'discourage' rather than 'prohibit' should be used. He stated they understood there was a difficult level of compromise that had to be brought for approval of a growth policy. He said the Flathead Lakers will stay informed and involved and would support the Flathead County Growth Policy.

Gary Krueger, 805 Church Drive, reiterated that the public process was a very important process for the document and also stated that what the public was told during the process was just as important. He stated the public was told the growth policy was a non-regulatory document and all public comment was based on that understanding. He felt if the document were to become regulatory it would be void because the process that was laid out for a regulatory document had not been followed. He asked the board to consider some language in the document that would require it to go through the process again if it were to become regulatory. He commented that as a non-regulatory it was sufficient. He also asked the board to reiterate and repeat throughout the document that it was a non-regulatory document. He would also like to see better language regarding private property rights.

Debbie Biolo, 1985 Hodgson Road, stated she appreciated the opportunity to participate in the process. She participated fully in the original document process and learned to pay close attention to restrictive limitations on individual rights of property owners. She was pleased to see that there had been a section added about property rights and that property rights had been identified through the public vision as a valued element in the valley. She was skeptical of some of the phrases that had been added to the section in part four and read aloud those phrases that she stated had alarmed her. She didn't feel it was right for a person to be able to enter into the public process as a participant to meet only their needs and expectations; thereby, restricting a private property owner from developing their property into what their own needs might be. She asked the board to really take a look at the public process as there wasn't a guarantee that the outcome would be favorable to the property owner. It could be manipulated. She didn't feel the text that was added to the document was a reasonable framework in which to consider property rights and didn't give an individual any support for the process. She stated she had also looked at the section regarding commercial land use and took offense to the text regarding a business owner placing their business on the cheapest land with the best visibility and accessibility. She wondered when these attitudes had come into the Flathead Valley. She disagreed with the authors' interpretation that there were no absolute property rights and with the establishment of theoretical structure of property rights originating in the community. She encouraged the board to look at the attitudes in the property rights section and discuss whether they were applicable and acceptable for the people of the Flathead Valley.



Russell Crowder, 2868 Lower Lost Prairie Road, represented American Dream Montana. He stated he agreed with the previous speakers and read Section 76-1-605(2)(a) M.C.A for the board. He spoke about several court cases regarding decisions made as to whether or not a growth policy was a regulatory document. He had concerns with section four of the draft growth policy and read some of the text as well as findings from several court cases that he stated did not distinguish between the zoning regulations, zoning statutes or the growth policy when it came to their regulatory nature. He stated that the Supreme Court had ruled a growth policy as regulatory for a long time. He also stated he had a problem with the property rights definition, or rather the attempt to define it, and read from the United States Constitution as well as the Montana Constitution Declaration of Rights inserting the definition from the draft growth policy in order to make his point. He didn't feel the section pertained to property rights. He spoke about the most recent lawsuit filed against the county commenting that the county will lose the lawsuit based on the fact the regulations were ignored as the documents that are cited are not regulatory. He felt the growth policy and all neighborhood plans that were adopted as an addendum to the growth policy were zoning. He stated that his organization was asking for the entire property rights section to be reviewed as they felt it was an insult to property owners and was intended to deceive and confuse but not protect. It also put property owners and taxpayers at risk, encourages local government and requires subdivisions to go far beyond what is necessary, proper or even legal. They would like to see the entire section redone in a way that has never been done before; to recognize, respect and protect the rights of private property owners. Make it truly a property rights section. This was the perfect opportunity to make that happen.

Steve Lorch, 655 Timberwolf Parkway, represented the Montana Department of Natural Resources and Conservation (DNRC). He had four points to discuss with the board which he had sent in an earlier email and wanted to clarify those points for the board. He said he would be happy to provide some language to help describe how state trust lands fit into the picture, recreation wise, in terms of general public use and formalized recreational use. He thanked the board members for the time and energy they put into the document and commented they had done a good job.

Ronald Buentemeier, 2225 Dillon Road, stated there always seemed to be a problem because people tended to forget about what the real needs of the community are over the wants of various matters. The plan should be directed at the needs of the community. It needed to be flexible to accommodate change. He commented that he was very pleased with goals three and four where they talk about forest land and said the board needed to recognize that there was a state law that described rights of farming. Forestry is a part of that. He felt it was very important that the law was mentioned within that particular goal, the document should make a reference to it. He showed the board a map of the agricultural land use in the valley and said all the forest land was referred



to as Agricultural/Rural. He felt that was incorrect terminology. He suggested the board fix that so there was some sort of clarification. The map was fine but the terminology needed to be changed. He thanked the board for their efforts and said he agreed with a previous speaker regarding the document being regulatory. He spoke about the West Valley Neighborhood Plan and gravel extraction, stating there was a bit of a problem there that needed to be fixed. He commented there was still a little bit of work to do and he wished the board luck in trying to fix those things.

Mayre Flowers, 35 Fourth Street West, was speaking on behalf of Citizens for a Better Flathead. She stated they were, for the most part, in support of the updates. They felt that the changes were in keeping with the direction they were given by the commissioners. They believe the growth policy contained a wealth of information that should be a value to many residents and businesses. She thanked the staff and board members for their time in researching the updates for various sections. She commented that the document was an unknown resource that provided a valuable service to the community. She pointed out a chart in the document that gave background information on employment in the valley and stated that it did not include public employers from Whitefish or Columbia Falls. She felt that information should be included. She felt the board did a good job in updating the economic section. They do not support the wording in policy 28.9, they feel it could potentially encourage or allow for higher density development in areas with shallow groundwater. She handed a letter from the Flathead Lake Biological Station to staff that had been submitted during the update process. The letter goes through the science of recognizing areas of shallow groundwater areas in the valley and the need for protection. She encouraged the board to keep that in mind. She referenced a single sentence that had been removed from a paragraph that was footnoted as looking at shallow groundwater issues. As it's paraphrasing a document it should be kept. In the neighborhood plan section there were staff comments for the board in the online version. They support policy 44.4 that calls for a clear majority and policy 44.5 should be deleted as it's problematic because it refers to a zoning statute rather than a growth policy statute.

## **BOARD QUESTIONS**

Hickey-AuClaire asked for clarification from staff regarding what an appropriate motion would be for this type of hearing.

Mouch stated since there is not a staff report with findings, ideally the board would make a resolution to approve, approve with amendments or deny the draft growth policy update. Based on discussions during a previous meeting it seemed clear that there would be some work shopping on the document. In that case, there could be board discussion on the public comment and the motion would be to table consideration of the draft document and send it back to workshop.

Larsen asked Lorch if he would please submit his language regarding how state trust lands fit into the picture for recreation.

Lorch said he was sorry he overlooked that and would submit something to staff.

Stevens asked Lorch if they charged the same lakefront rates when they lease fishing access sites to the Fish, Wildlife and Parks Department as they do the homeowners around the lake.

Lorch said the fishing access sites are typically done under a land use license so the fee structure was different.

Stevens asked Rosso if he had any further comments.

Rosso said in one of the last sections on riparian areas it stated that riparian areas help slow stream bank erosion. He thought that if riparian areas were kept natural, were vegetated or protected then they could help slow stream bank erosion. If they were allowed to deteriorate because of overuse or being unprotected it caused initial erosion and those areas wouldn't help slow stream bank erosion. He suggested the board add the word 'natural vegetative' at the beginning of the paragraph and include the word 'can' between the words areas and help.

**STAFF  
REBUTTAL**

Mouch wanted to address two things that came up during public comment for the benefit of the board as well as the public. First, the document grew in length online because she incorporated the appendices that were part of the original document. That's approximately 200 more pages. The additions that were made to the economic development chapter may have added a couple of pages but not 200 more. She also wanted to touch on the history of the property rights section. The concept of property rights was brought up by one of the commissioners, acting as a private citizen on behalf of a group of citizens that wanted to see that section further addressed as part of the update process. They submitted some draft language in a property owner's bill of rights format that the board considered. She did some research and found that the board held six public workshops to discuss the property owner's bill of rights and how it had become what property rights mean text. It was a collaborative effort.

Grieve reiterated that it was a collaborative effort and not drafted by just one member of the board or staff. It was a challenging issue even back in 2006 when staff asked members of the public to come in with definitions of property rights and didn't get a great turnout on that request. It's a topic that the office had always struggled with and if the board wanted to continue to work on it that was what staff would do. He also commented on the issue of regulatory versus non-regulatory documents. He stated that staff does give consideration to the



## **BOARD DISCUSSION**

plan but they don't propose any draft findings-of-fact based on the plan. He gave several examples of how staff uses the growth policy, zoning regulations and subdivision regulations as well as enforcement and violations of regulatory documents such as the zoning regulations and subdivision regulations.

Stevens suggested that perhaps in staffs' rendition to people when they asked whether they could subdivide or not they should say the growth policy was statutorily non-regulatory but judicially regulatory. Then if somebody didn't like it and filed a lawsuit, the judiciary would make it regulatory because that seems to be what the situation was in the state of Montana. He asked staff if the staff reports indicate whether or not a proposed subdivision was in compliance with the growth policy.

Grieve stated that was what he was referring to when he mentioned a staff report template. He went on to clarify.

Stevens said in his experience he felt that master plans and growth policies tend to throw everything in them but the kitchen sink. The more text we have the less flexibility we have which is statutorily non-regulatory but judicially regulatory and therein lies a big problem for the individual property owner who was trying to provide for the welfare of his family. There was no flexibility when you had a document that was intended to be non-regulatory but the judges say it was regulatory. He commented that his view had always been if it increased the welfare of one individual and their family a whole bunch, then it increased the general welfare a little because that individual was part of the general welfare, part of the community. The fact that there might be a marginal distress for somebody else is overridden.

Grieve said staff would defer to the board's wisdom and do what they tell staff to do with the document. He agreed with Stevens.

Hickey-AuClaire asked for the Planning Director's guidance on a motion for the draft document.

Grieve said procedurally speaking the board was on safe ground. They held a public hearing and closed that public hearing. The board could now discuss what they would like to do next and essentially set a workshop date. This was not really an agenda item that needed tabling because it was unique in that there were not findings-of-fact but rather a resolution. Staff did not prepare a resolution for this public hearing anticipating the need for more workshops. The best thing to do for the benefit of everyone present would be to continue discussion and if they felt more workshops were necessary they would need to set a date for that workshop so everyone present was aware of that date.

Lapp said it sounded to him, based on public comment this evening, like it was mainly the property rights section that needed to be reviewed as well as just a

few minor things. He felt maybe one or two meetings might suffice.

Heim commented that at the last meeting when they talked about the draft growth policy they were concerned about a handful of words that a member of the public had brought to the board's attention. He went through the document and highlighted those particular words and wanted the board to go through that as well.

Hickey-AuClaire stated her concern with that was that it then becomes re-writing as opposed to updating. She felt that during the process over the last year or so, when they got to the policies and goals, they would back off because the board felt if they started getting into that they would be re-writing the entire document instead of updating.

Heim stated they did change a lot of those words but he felt they had missed a few.

Larson said he felt they needed to take a look at some of those words especially in light of some of the lawsuits that have been filed. He said when the original growth policy was written they wrote it based on the document being non-regulatory. He didn't feel they needed to change the meaning of the policies but they needed to take a look at those words because if they were regulatory sounding there was a dilemma now that there was a statute that said it's non-regulatory and a court system that says it was. That's the difference with his attitude during this update period then when they first wrote the growth policy. He stated that he agreed with the property rights comments. He felt it was trying to be all things to all people and the board needed to spend more time on that section.

DeKort wanted to encourage members of the public to bring something to the board that they could follow up on and discuss.

The board and staff discussed what changes they might need to make and a date for a workshop.

**MAIN MOTION  
TO HOLD A  
WORKSHOP**

Stevens made a motion seconded by DeKort to continue board discussion and hold a workshop on February 29, 2012 @ 6:00 P.M.

**ROLL CALL**

On a roll call vote the motion passed unanimously.

**COMMITTEE  
REPORTS**

None.

**OLD BUSINESS**

Grieve reminded the board of the workshop on March 28, 2012 to discuss Committee B work and wedding centers.



Lapp asked if staff wanted wedding people at the workshop.

Grieve said it was a workshop open to the public and everyone was welcome. He clarified the reason for the board's input regarding commercial wedding centers.

#### NEW BUSINESS

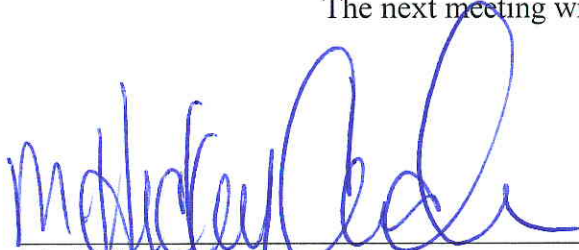
Grieve spoke briefly about the subdivision regulations and the requirement for off-site improvements to roads. He asked the board if they would be interested in setting up a workshop to discuss possible changes to those requirements and gave a brief history of that particular subdivision regulation requirement. He felt it warranted review again to find what would seem reasonable and fair.

The board members and staff discussed at length the current requirement and what might need to be reviewed and what the options could be. They also discussed when to hold a workshop; staff will add this item for discussion on the March 28, 2012 workshop that had already been scheduled.

The board and staff had a brief discussion regarding final plat conditions, enforcement of those and statements that are placed on the face of the final plat.

#### ADJOURNMENT

The meeting was adjourned at approximately 8:10 pm. on a motion by Stevens. The next meeting will be held at 6:00 p.m. on March 14, 2012.

  
Marie Hickey-AuClaire, Chairman  
Mary Fisher, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 03 / 14 /12